

**PROGRAMMATIC AGREEMENT BETWEEN
THE UTAH DEPARTMENT OF TRANSPORTATION AND
THE UTAH STATE HISTORIC PRESERVATION OFFICER**

REGARDING

**IMPLEMENTATION OF U.C.A. 9-8-404 FOR STATE-FUNDED
TRANSPORTATION PROJECTS IN UTAH**

WHEREAS, the Utah Department of Transportation (UDOT), under the authority of Utah Code Annotated (U.C.A.) 72 *et seq.*, administers the state-funded transportation program (Program) in the state of Utah; and

WHEREAS, UDOT is responsible for ensuring that the Program is in compliance with U.C.A. 9-8-404 by taking into account the effects of an expenditure or undertaking on any historic property and by providing the Utah State Historic Preservation Officer (SHPO) with a written evaluation of the expenditure's or undertaking's effect on the historic property; and

WHEREAS, the responsibilities of the SHPO under U.C.A. 9-8-404 are to comment on an undertaking's or expenditure's effect on historic properties; and

WHEREAS, UDOT has determined that implementation of the Program may have an effect upon historic properties (defined in U.C.A. 9-8-302 as any prehistoric or historic district, site, building, structure, or specimen included in, or eligible for inclusion in, the National Register of Historic Places or the State Register), and has consulted with the SHPO; and

WHEREAS, the signatories have developed this Programmatic Agreement (State Agreement) in order to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in Utah; and

WHEREAS, this State Agreement replaces the *Memorandum of Understanding Between the Utah Department of Transportation and the Utah State Historic Preservation Office Concerning State Funded Minor Highway Improvements and Structure Maintenance Activities and Agency Responsibilities Pursuant to U.C.A. 9-8-404*, executed on June 16, 2004.

NOW, THEREFORE, UDOT and the SHPO agree that the Program in Utah shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in Utah and that these stipulations shall govern compliance of the Program with U.C.A. 9-8-404 until this State Agreement expires or is terminated.

STIPULATIONS

- I. UDOT will comply with U.C.A. 9-8-404 by following the stipulations provided in the *Programmatic Agreement Among the Federal Highway Administration, the Utah Department of Transportation, the Utah State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Section 106 Implementation for Federal-Aid Transportation Projects in the State of Utah* (Federal Agreement), executed April 16, 2007, with the following exceptions:
 - a. UDOT retains ultimate responsibility for compliance with U.C.A. 9-8-404. For this State Agreement, FHWA and the Council will be replaced by UDOT.
 - b. Tribal consultation will be initiated by UDOT and will be done at the discretion of the UDOT professionally qualified staff (PQS), depending on the nature and scope of the undertaking.

- II. Tier 1 and Tier 2 project review will be defined in this State Agreement the same way as in the Federal Agreement, using the same Tier 1 Screening Form (Attachment A)
 - a. Tier 1 project review is for those undertakings that have the potential to affect historic properties, but following appropriate screening, may be determined to require no further review of consultation under this State Agreement.
 - I. Tier 1 project review must meet the following criteria: 1) undertaking has no known public controversy based on historic preservation issues; and 2) undertaking has a finding of No Historic Properties Affected.
 - b. Tier 2 project review is for all other projects not processed as Tier 1 projects (i.e., projects that result in a finding of No Adverse Effect or Adverse Effect). These projects will require further review as outlined in the Federal Agreement.
 - c. The copy of the quarterly report completed under provisions of the Federal Agreement provided to the SHPO will include undertakings completed under provisions of this State Agreement.

- III. The copy of the annual report completed under provisions of the Federal Agreement provided to the SHPO will include undertakings completed under provisions of this State Agreement.

- IV. Amendment
 - a. Either signatory party to this Agreement may at any time propose amendments, whereupon both signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of both signatory parties.
 - b. Each attachment to this Agreement may be individually amended through consultation of the signatory parties without requiring amendment of the

Agreement, unless the signatory parties through such consultation decide otherwise.

V. Termination

- a. Either party to this State Agreement may terminate this agreement by providing 30 calendar days notice, in writing to the other party, provided that both parties will consult during the period prior to termination to seek agreement or amendments or other actions that would avoid termination.

VI. Duration of Agreement

- a. This State Agreement shall remain in effect for a period of ten (10) years after the date it takes effect, unless it is terminated prior to that time.
- b. Ninety days prior to the conclusion of the ten year period, UDOT will notify the SHPO in writing. If there are no objections from the SHPO, the term of the Agreement will automatically be extended for an additional ten years.
- c. If either party objects to extending the Agreement, or proposes amendments, UDOT will consult with the SHPO to consider amendments or other actions to avoid termination.

Execution and implementation of this State Agreement evidence that UDOT has taken into account the effects of the state-funded transportation program and its individual undertakings on historic properties, and that UDOT has complied with U.C.A. 9-8-404 for the Program and its individual undertakings.

SIGNATORIES

UTAH STATE HISTORIC PRESERVATION OFFICER



By: Wilson Martin
Wilson Martin, Utah SHPO

Date: 2/27/2008

UTAH DEPARTMENT OF TRANSPORTATION

By: John Njord
John Njord, Executive Director

Date: 3-19-08

ATTACHMENT A

TIER 1 Screening Form

Project No:
PIN No:
Project Name:
Project Description:
City:
County:

Screened undertakings are those undertakings that have the potential to affect historic properties, but following appropriate screening, may be determined to require no further review or consultation under this Agreement.

The Screening Process

The determination that an undertaking is exempt from further review or consultation will be made by the PQS, although some of the activities included in the screening may be done by qualified consultants, as specified in Stipulation IV.B of the Programmatic Agreement. The screening process may include one or more of the following procedures. The process is not limited to the procedures below, nor are all these procedures required for all undertakings. Screening should be appropriate to the specific complexity, scale, and location of the undertaking.

Check all that apply.

Antiquities Project No: _____

Literature Review

- Class I literature search
- Records review (i.e. UDSH, UDOT, BLM, etc.) List _____
- Project plans
- As built project plans
- Aerial photographs List _____
- Historic Maps List _____
- Topographic Maps List _____
- ROW/Ownership/Parcel Data List _____
- Other List _____
- Other List _____

Field Review

- Field review (list methods used) _____
- Pedestrian survey (Class III)
If no field survey conducted, describe why not:
- Other

Consultation

- SHPO
- CLG List _____
- Tribes List _____
- Knowledgeable Informants List _____
- Other List _____

Controversy based on historic preservation issues? If yes, consultation with SHPO and FHWA is required.

The following Supporting Documentation* is attached. (List below)

1. _____
2. _____
3. _____

*If a cultural resource inventory is conducted under this stipulation, any cultural resource reports generated from the survey shall be submitted quarterly by the Central Environmental staff to the Utah Division of State History (UDSH) for filing.

Based on the screening process it is my professional determination that the subject undertaking will result in the following effect finding:

- No Historic Properties Affected: no sites present
- No Historic Properties Affected: sites present but no sites eligible
- No Historic Properties Affected: eligible sites present, but sites are completely avoided by the undertaking and the potential for substantial indirect effects is very low.

Based on the outcome of the screening process, this undertaking requires no further review and consultation. Documentation of the screening will be included in the following:

- Project Files
- Quarterly Report
- Categorical Exclusion: _____
- Environmental Assessment: _____
- Environmental Impact Statement: _____

Name: _____

Title: _____

Date: _____